CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 395

Heard at Montreal, Tuesday, February 13th, 1973

Concerning

BRITISH COLUMBIA RAILWAY

and

TRANSPORTATION – COMMUNICATION DIVISION BRAC

DISPUTE:

Dismissal of Operator W.L. Witt, effective June 20, 1972, for violation of Rule G, Uniform Code of Operating Rules, Revision of 1962.

JOINT STATEMENT OF ISSUE:.

By double registered letter of June 20, 1972, Operator W.L. Witt was advised of his dismissal from the service of the British Columbia Railway Company for violation of Rule G, Uniform Code of Operating Rules.

It was alleged by the Company that Operator Witt was observed in a hotel beer parlour at Lillooet, B.C. when, in fact, he should have been duty at the Railway's station at Lillooet.

The Union has contended that the dismissal is unwarranted and requests the reinstatement of Operator Witt.

The Company has declined.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) T. B. GOODWIN	(SGD.) F. B. ESTABROOKS
SYSTEM GENERAL CHAIRMAN	REGIONAL MANAGER

There appeared on behalf of the Company:

R. E. Richmond – Industrial Relations Manager, Vancouver
B. G. Metz – Labour Relations Assistant, Vancouver

And on behalf of the Brotherhood:

T. B. Goodwin – System General Chairman, Winnipeg
A. L. Campbell – Counsel, Winnipeg

AWARD OF THE ARBITRATOR

The grievor, an employee of some six years' seniority, was discharged on June 20, 1972 for alleged violation of Rule G of the Uniform Code of Operating Rules. Rule G forbids the use or possession of narcotics or intoxicants by employees on duty or subject to duty.

The material before me establishes a number of facts not in dispute. On June 3, 1972, the grievor was employed as an operator at Lillooet. His assigned hours were from 0730 to 1530, although it seems he did not in fact report for duty until 0800. At about 1100 he "went home for a bite to eat", and he did not return. At his investigation for failure to remain on duty he stated simply that he did not return because he "fell asleep outside".

During the course of the afternoon the terminal supervisor, attempting to locate the grievor, observed his car parked outside the Reynolds Hotel. Subsequently, having obtained advice as to what to do, the supervisor went into the hotel and saw the grievor, with others, seated at a table on which there were glasses of what he took to be beer. The supervisor stated that this was at approximately 1505, that is, during the time when the grievor ought to have been at work.

The grievor denies that he was in the hotel prior to 1530 on the day in question, and contends that, if he was in the hotel prior to that time, it has not been shown that he was drinking. As to the latter point, I think the proper course is to draw the ordinary inferences and conclude that the grievor was indeed drinking beer in the hotel. It may be observed that the grievor seems not to have denied this, he simply asserts that it has not been proved; it is noteworthy as well that the grievor avoided attending his investigation on this point.

The difficult question in this case is as to the time when the grievor went to the hotel. On the one hand, there is a statement of the terminal supervisor that he saw him there at about 1505. While the terminal supervisor's statement contains a number of inaccuracies, it is nevertheless clear that the grievor did go to the hotel and was there at about mid-afternoon that day. The supervisor went into the hotel after having seen the grievor's car outside and after having consulted the assistant superintendent. The consultation with the assistant superintendent was done by telephone just before 1500, a matter which has not been called in question. Whatever the delay which may have taken place between the supervisor's consultation with the assistant superintendent and his actual observation of the grievor, it remains that the grievor's car was outside the hotel well before 1530, and indeed before 1500, a matter which, again, has not been called in question.

On the other hand, the grievor stated that while he was in the Reynolds Hotel on the day in question it was not before 1530. In support of this were submitted statements of those who were his companions in the hotel that afternoon. Each of the statements refers to a comparison of watches made between the grievor and another, when the time was stated to be 1530. The statement of the waiter is of no assistance, since he came on duty at 1530 and could not account for what happened before then. The other statements, when read carefully, simply recite the grievor's own statement as to the time, a statement which, in the circumstances, must be regarded as self-serving.

During the course of the grievance procedure it was argued that the grievor had been placed in "double jeopardy" and was being tried twice for the same offence. The grievor was subject to investigation for failure to remain on duty, an offence which there can be no doubt he committed. Whether or not any discipline was imposed for this is not clear from the material before me. He was also called for investigations with respect to the Rule G violation, an investigation which as has been mentioned he avoided. This was a separate matter and involved different considerations. It is not a case of his being tried twice for the same offence.

Having regard to all of the material before me, it is my conclusion that the grievor was indeed in violation of Rule G on the occasion in question. His complete disregard of his obligations to his employer needs no comment. Accordingly, the grievance is dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR